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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961 2

No. ~~23~~ 24

**HALLIBURTON OIL WELL CEMENTING
COMPANY,**

Appellant,

versus

JAMES S. REILY,

COLLECTOR OF REVENUE, STATE OF LOUISIANA

**(Since Succeeded by Robert L. Roland, Who Was Duly
Succeeded by Roland Cocreham),**

Appellee

**On Appeal from the Supreme Court of the
State of Louisiana.**

**BRIEF OF AMICUS CURIAE (REPRESENTING
HUMBLE OIL & REFINING COMPANY)**

FORREST M. DARROUGH

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Houston, Texas

Amicus Curiae

**(Attorney for Humble Oil &
Refining Company)**

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 264

**HALLIBURTON OIL WELL CEMENTING
COMPANY,**

Appellant.

VERSUS

JAMES S. REILY,

COLLECTOR OF REVENUE, STATE OF LOUISIANA

(Since Succeeded by Robert L. Roland, Who Was Duly
Succeeded by Rola. I Coecheam),

Appellee

**On Appeal from the Supreme Court of the
State of Louisiana.**

**BRIEF OF AMICUS CURIAE (REPRESENTING
HUMBLE OIL & REFINING COMPANY)**

THE ISSUE

The issue here is whether or not a state, through its powers of taxation, may discriminate against the citizen who operates in interstate commerce, and thus provide a direct commercial advantage to local business. **Restated:** Can a state

levy an excise tax upon the privilege of engaging in multi-state business operations, while simultaneously exempting from the same tax the wholly intra-state operator? Can the Louisiana Use Tax, which falls solely upon the use of goods imported into Louisiana from other states, be more burdensome than the Louisiana Sales Tax would be where it falls upon the identical economic operation performed wholly within Louisiana's borders?

Humble Oil & Refining Company, Represented by Amicus Curiae, Has the Same Controversy with the Louisiana Collector.

Under contract with Humble, Chicago Bridge and Iron Company produced and fabricated wholly outside Louisiana steel parts for certain field-erected structures for Humble's oil refinery at Baton Rouge, Louisiana. The agreement with Chicago Bridge and Iron requires that Humble reimburse that company for Louisiana Use Tax paid on the fabricated parts thus imported into Louisiana.

If Chicago Bridge and Iron Company had its fabrication shops in Louisiana, it would pay a sales tax on the items of physical equipment which it, as the ultimate consumer thereof, incorporated into its finished product. But, there would be no tax upon the labor-and-shop-overhead element of the cost of fabrication, and there would be no sales tax on transportation costs expended within the State of Louisiana.

Yet, because the labor and-shop-overhead and the transportation costs were expended outside the State of Louisiana, the Louisiana Collector would include these elements in the

tax base. Louisiana would tax the transportation costs and the labor-and-shop-overhead costs solely because they were expended outside Louisiana and, thereafter, the finished products were brought into Louisiana.

This is the same issue which is involved in the case of Halliburton Oil Well Cementing Company, now before this Court on Jurisdictional Statement. In the Halliburton case, the Collector (upheld by the Louisiana Supreme Court) demands the Use Tax on the labor-and-shop-overhead while stipulating that

"If Halliburton had . . . operated . . . at a location within the State of Louisiana . . .

" . . . there would have been no Louisiana Sales Tax or Use Tax upon the Labor and Shop Overhead." o

It is clear that Louisiana would tax this element of cost only because of the interstate movement and the multi-state nature of the business operation.

The Issue is of Substantial Importance.

In *Memphis Steam Laundry Cleaner, Inc., v. Stone*, 342 U.S. 489, 96 L.Ed. 436, 72 S.Ct. 424 (1952), this Court dealt with an excise tax upon the privilege of soliciting business in Mississippi by an out-of-state concern. This Court said:

"The inclusion of these elements in the tax base results in an increase of approximately \$18,659.95 which Humble, under its contract with Chicago Bridge and Iron Company, will be responsible for if the Collector's position is maintained.

"We hold that the tax before us infringes the Commerce Clause under either interpretation of the operating incidence of the tax.

"The Commerce Clause created the nation-wide area of free trade essential to this country's economic welfare by removing state lines as impediments to intercourse between the states. The tax imposed in this case made the Mississippi state line into a local obstruction to the flow of interstate commerce that cannot stand under the Commerce Clause." (96 L.Ed. at p. 441)

In *Spector Motor Service, Inc., v. O'Connor*, 340 U.S. 692, 95 L.Ed. 573, 71 S.Ct. 508 (1951), this Court held unconstitutional a state excise tax upon the privilege of engaging in interstate commerce. In *Best v. Maxwell*, 311 U.S. 454, 61 S.Ct. 335, this Court said that

"The commerce clause forbids discrimination, whether forthright or ingenious. In each case it is our duty to determine whether the statute under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce. . . ."

Louisiana taxes the interstate operator in a discriminatory manner. If Louisiana may erect a tax barrier at its interstate border lines, other states may do the same, and thus the flow of interstate commerce will be seriously impeded.

CONCLUSION

It is respectfully submitted that there is need for a decision by this Court determining that a state use tax (falling upon the interstate business operation) cannot be greater than the sales tax would be upon the identical operation which

is wholly intrastate. We respectfully refer this Court to the arguments in the Jurisdictional Statement filed by Halliburton Oil Well Cementing Company, in which we join and concur.

It is further submitted that this Court should note probable jurisdiction in this case and hear the case upon its merits; that, upon such hearing, this Court should reverse the decision of the Louisiana Supreme Court and reiterate that interstate commerce must be free of economic barriers at the state lines.

Respectfully submitted,

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Refining Company)